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Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Communications Assistance for
Law Enforcement Act

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CC Docket No. 97-213

Reply Comments of WorldCom, Inc

WorldCom, Inc ("WorldCom") respectfully submits these reply comments with respect to issues remanded to the Federal Communications Commission (the "Commission") from the United States Court of Appeals for the District of Columbia Circuit ("the Court" or "the Appellate Court"). WorldCom is sensitive to the needs of Law Enforcement Agencies ("LEAs"). CALEA, however, does not authorize the Commission to require provision of the punch list items sought by the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI"). WorldCom supports the comments of the industry and urges the Commission to conclude that the J-STD-025 (the interim industry standard, otherwise referred to as the "J-standard" or "J-STD") is not deficient and "adding the punch list items will impermissibly exceed the scope of CALEA, conflict with established electronic surveillance law, infringe upon the privacy and security of communications."¹ Before the Commission adds any punch list items, it must determine how the J-STD-025 is deficient in meeting Communications Assistance

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for Law Enforcement Act (“CALEA”) requirements.² The record includes no new information to support a conclusion that the J-Standard is deficient.

The Record Does Not Reveal J-Standard Deficiencies. The Appellate Court correctly determined that the Commission failed to find any deficiency in the J-standard. No party in this proceeding has identified such a deficiency. Under the statute, the Commission has no authority to reject or modify the J-Standard.

Under CALEA, the standard must be sufficient to ensure the availability of “call-identifying information.” That term is defined within the statute as encompassing “dialing or signaling information that identifies the origin, direction, destination or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier.”³ The Department of Justice and the Federal Bureau of Investigation (DOJ/FBI) allege that the J-standard is deficient because: it equates call-identifying information” only with telephone numbers, its interpretation of “direction” and “termination” makes those terms largely redundant with “origin” and “destination” and it results in the exclusion of substantial amounts of information to which law enforcement had traditionally had access.⁴ DOJ/FBI appear to argue that the J-standard is deficient in providing the information to which they would like access. Yet, they fail to explain why it is deficient in meeting the statutory requirements regarding “call-identifying information.”

¹ BellSouth Comments at i.

² Communications Assistance for Law Enforcement Act, Pub L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. § 2522, and 47 U.S.C. §§229, 1001-1010), (“CALEA”).

³ 47 U.S.C. § 1001(2)

⁴ DOJ/FBI Comments at 29.

Additional punch list items are not call-identifying information. The punch list items include: dialed-digit extraction; subject initiated dialing and signaling information; in-band and out-of-band signaling; and party hold/join/drop information. Only one of these-“dialed digit extraction”- even potentially comprises “call-identifying information.” Not only is this item not readily available to carriers, it also includes content and thus lies outside of the CALEA requirements at issue. Again, DOJ/FBI have explained why they would like access to this information, but they have not explained how the statute allows it.

Even assuming that the J-standard was deficient, which has not been shown, the Commission could not add the punch list items unless they related to “call-identifying information” that is reasonably available to the carriers. The DOJ/FBI commenters have not adequately demonstrated such a relationship.

The originating and terminating telephone numbers identify calls in the telephone network. In fact, most telephone customers are billed according to their telephone number. A telephone number is the only element that can identify a caller on the network. The carrier does not use any other signals to identify the calling or called party. The industry used the most logical “reasonably available” information in a carrier’s network when defining “call-identifying information” in the J-STD. The DOJ/FBI’s claim, for example, that a “busy signal” is call-identifying information is in error.⁵ The DOJ/FBI is clearly confusing “identification” with “call status.” Call status is undoubtedly outside the scope of CALEA because it is not related to the origin, direction,

⁵ Id. at 26. “Network signaling that reports the progress of outgoing call attempts constitutes “call-identifying information” because it identifies how the call attempt is being terminated by the called party’s equipment, facilities and services.....Busy signals and ringing permit law enforcement to “identify” these two different kinds of termination”

destination or termination of the call. A caller that reaches a busy signal has not even established a call in telephony terms. While DOJ/FBI explain how it would use signals other than telephone numbers, it does not explain how this is within the scope of CALEA.

The DOJ/FBI commenters fail to resolve a significant problem with the provision of post-cut through dialed digits. Such a provision would necessarily give LEAs access to content for which such dialing is used, for example, to access automated banking services. This content is clearly not “call-identifying information.” Indeed, DOJ/FBI concedes that this is the case.⁶ They then argue that the Commission should nonetheless require that carriers implement the capability to provide such information, even if they need never provide it.⁷ This is an absurd result. The Commission cannot impose a requirement based on speculation that it might be related to call-identifying information.

Post-cut-through dialed digits include content: The DOJ/FBI recognize that dialed digits will reveal content. It argues that the Commission could modify its order to take into account the possibility that carriers might one day be able to distinguish between dialed digits that might be “call identifying information” and those that constitute content.⁸ DOJ/FBI suggest that at such a time the Commission could allow carriers to filter out “transactional” digits. Again, this is completely backwards. DOJ/FBI are asking the Commission to require today what CALEA does not allow, subject to the possibility that this defect might later be cured. They offer no precedent for this unique approach to statutory interpretation.

⁶ Id. at 50.

⁷ Id. at 50-51.

⁸ Id. at 52.

DOJ/FBI further argues that the Commission should require this capability pending a court determination that the statute provides sufficient legal authority for the carrier to use the capability.⁹ The Commission cannot countenance this absurd placing of the cart before the horse. Carriers should not be required to deploy technology on the possibility that a court might approve its use.

The DOJ/FBI commenters have also failed to explain why the industry-proposed alternatives are insufficient. They have simply asserted a preference for access to post-cut-through dialed digits. This is not a proper basis on which the Commission could include this requirement.

The Commission should adopt a rule that clarifies that CALEA requirements do not preclude LEAs from obtaining proper legal authority. Worldcom supports DOJ/FBI's recommendation that the Commission adopt a rule to clarify that its rules should not be misconstrued to compel the delivery of information in the absence of proper legal authorization. The rule should distinguish between capabilities that carriers must have to comply with a court order or other lawful authorization, and what carriers must do absent such authorization. This would be a beneficial addition.

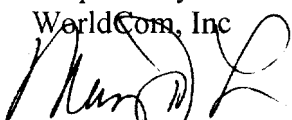
Congress did not intend CALEA requirements to be implemented regardless of cost. DOJ/FBI suggest that with respect to cost, the only inquiry is whether there is a less costly alternative to a particular capability. In its view it is irrelevant that a particular capability might cost more to implement than any national decision-maker could justify. Congress did not delegate to this Commission the authority to adopt requirements regardless of their cost. There must be a point where a particular capability is simply too costly, even though there may be no less costly alternative. The DOJ/FBI is not correct

⁹ Id. at 51.

when they imply that cost is not an issue for items that are not in the J-STD.¹⁰ CALEA implementation is not open-ended. Congress was clear in its intent that CALEA implementation must not overburden the industry. If Congress intended for the cost of complying with CALEA to be open-ended as indicated by the DOJ/FBI, they would not have capped the DOJ/FBI's funding for the industry of this legislation at \$500 million.

Respectfully Submitted,

WorldCom, Inc



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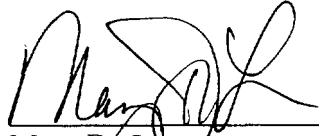
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December 8, 2000

¹⁰ Id. at 45.

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, the information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on December 8, 2000.

A handwritten signature in black ink, appearing to read 'Mary De Luca', written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Barbara Nowlin, do hereby certify that on this 8th day of December, 2000, copies of the foregoing Reply Comments of WorldCom, Inc. were served on each of the following persons:

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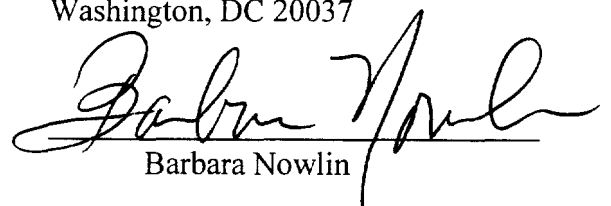
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